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In the Supreme Court of the United States

OCTOBER TERM, 1979

SHELBY COUNTY GOVERNMENT, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-2) and the opinions of the district court (Pet. App. A-4 to A-6 and A-7 to A-9) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 2, 1979. A timely petition for rehearing was denied on August 28, 1979. The petition for a writ of certiorari was filed on November 5, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals properly granted enforcement of an EEOC subpoena seeking employment information for an entire county government where the individual charge under investigation was a class charge and the county had centralized personnel practices.

STATEMENT

On February 6, 1974, Hughley Moore, Jr., filed a charge with the Equal Employment Opportunity Commission alleging that the Shelby County Government discriminated against black employees as to salaries and promotions (Pet. App. A-10 to A-11). As a part of its investigation of this charge, the Commission first sent a letter and then a subpoena directing Shelby County to produce three documents: (1) the EEOC Detail Report, which is a county report breaking down employees by, among other things, race and sex in each department; (2) a list of current county employees; and (3) a list of all persons promoted within the year preceding the filing of the charge (*id.* at A-14).

In response to the subpoena, Shelby County produced only a list of employees in the department in which Mr. Moore worked. The Commission then filed an application in federal district court for an order requiring obedience to the subpoena. The Commission also filed an affidavit by the director of the district office describing its efforts to secure voluntary compliance (Jt. App. 3, 8).[1]

At a hearing on the motion, Shelby County argued that it had provided the Commission with all the material relevant to Mr. Moore's charge, and that even if the charge raised class allegations the class could not extend beyond the department in which Mr. Moore worked (Jt. App. 98). The Commission argued, however, that its county-wide investigation was reasonable because Mr. Moore's charge against the county was a class charge, because a number of other class charges had been filed against county departments, and because of

[1] "Jt. App." refers to the Joint Appendix in the court of appeals.

the indications of pervasive discrimination that had been revealed during the investigation of those charges (*id.* at 99-100). The Commission also pointed out that, since the information sought was contained on two specifically identified computer tapes, the request was not burdensome (*id.* at 87).

The district court ordered enforcement of the subpoena but only with respect to three county departments (personnel, county administrative, and county insurance) in which Mr. Moore had either worked or applied for work (Pet. A-5 to A-6). At the same time, however, the court invited the Commission to file a list of other pending charges against the county, holding out the possibility that the enforcement order would be extended to other departments (Jt. App. 41).

The Commission thereafter presented three uninvestigated class charges to the district court. One of the charges was directed against Shelby County as a whole, one was directed against the county's Health Department, and one against the County Trustee (*id.* at 44-46). The Commission also submitted a list of 38 charges against various county offices which had been investigated only as to individual claims (*id.* at 42, 117).

The district court then expanded its order enforcing the subpoena to include the three departments in which the persons with the uninvestigated class charges were employed. The court refused, however, to expand its order to cover the county as a whole. The court concluded that, since Shelby County is a large and varied institution, isolated racial discrimination charges by separate individuals would not provide a basis for the broad scope of the Commission's investigation (Pet. App. A-8).

The court of appeals reversed, finding that the material sought was readily available and "relevant to the question of class certification" (Pet. App. A-2).

ARGUMENT

Petitioner contends (Pet. 7-13) that the subpoena should not have been enforced because there was an insufficient relationship between the charge and the information sought. The court of appeals, however, properly applied established legal principles to the facts of this case, and further review is unwarranted.

It is undisputed by petitioner that the Commission, in conducting an investigation of an employment discrimination charge, may ordinarily compel disclosure of information relevant to that charge. E.g., *EEOC* v. *University of New Mexico*, 504 F. 2d 1296, 1301 (10th Cir. 1974). So long as the information being sought "is relevant to the charge under investigation," its disclosure is required by Section 709(a) of Title VII, 42 U.S.C. 2000e-8(a).

The information sought by the Commission's subpoena is plainly relevant to its investigation of Mr. Moore's claim that the county was discriminating against blacks as a class in salaries and promotions (Pet. App. A-10 to A-11).[2] Indeed, Mr. Moore was in a particularly well-informed position to allege county-wide discrimination because he had access to county-wide personnel records while he was a clerk in the personnel department and also when he worked in the county administrative department. The Commission also showed that other

[2]Because the case is still in its investigatory stages and a complaint has not been filed, we assume that the court of appeals' reference "to the question of class certification" (Pet. App. A-2) was intended to refer to the class aspects of the charge.

uninvestigated charges alleged discrimination against blacks as a class and that there were individual claims against a number of different departments.

There was thus good reason to inquire into the policies of the county as a whole and to suspect that the information sought would be relevant to the several pending charges. The county-wide evidence could help identify whether the claims of the charging parties were unique or whether there is reason to believe that Shelby County discriminates against blacks as a group. See *Hazelwood School District* v. *United States*, 433 U.S. 299, 308 (1977). Even with respect to individual claims, the existence of a pattern of county-wide discrimination would be relevant to determine whether discrimination occurred in a particular personnel action or in a particular county department. See *Furnco Construction Corp.* v. *Waters*, 438 U.S. 567, 579-580 (1978).

Petitioner's argument that a single charge of discrimination cannot trigger an investigation of an employer as an entity when the employer consists of separate divisions which have independent hiring and promotion policies (Pet. 7) ignores the fact that Shelby County has centralized personnel policies by virtue of its statutes and its practices. The county has its own civil service system, providing for uniform service classifications, pay schedules, appointment and promotion procedures and personnel policies. 1957 Tenn. Priv. Acts, Ch. 279, at 830 (Senate Bill No. 728); 1971 Tenn. Priv. Acts, Ch. 110, at 830 (House Bill No. 736). Moreover, the record shows that the information sought is contained on identified and readily accessible computer tapes. This case is thus unlike those on which

petitioner relies (*EEOC* v. *Packard Electric Division*, 569 F. 2d 315 (5th Cir. 1978); *Joslin Dry Goods* v. *EEOC*, 483 F. 2d 178 (10th Cir. 1973)) where there were no centralized employment policies and where compliance may have been burdensome. Certainly in a case charging that the county is engaged in systematic racial discrimination, it is relevant to determine whether the discrimination is systematic, isolated, or non-existent.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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